

Heal Italy decree-law: main tax measures

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Introduction

In order to face the COVID-19 emergency, the Italian government has issued Decree-Law 18/2020, a package of extraordinary measures to strengthen the national health service and provide financial and economic support to families, workers and companies.

The decree-law entered into force on 17 March 2020 and will be converted into law, with potential amendments, by Parliament within 60 days of its adoption.

This article summarises the main tax measures included in the decree-law.

Tax credit for sanitation costs

A tax credit equal to 50% of the costs incurred for the sanitisation of workplaces and work appliances, up to a maximum of €20,000, is recognised for the 2020 fiscal year in favour of parties performing business or professional activities.

The requirements to take advantage of this tax credit are subject to the release of a separate decree.

Tax credit for rent costs

The decree-law has also introduced a tax credit equal to 60% of lease related to the month of March 2020 for properties registered in the C/1 cadastral category (ie, shops and workshops). This benefit does not apply to activities considered essential (ie, pharmacies and food shops that should not be subject to material collateral damage from COVID-19).

Charitable contributions deductions

The decree-law has also introduced new deductions for charitable contributions to support the COVID-19 emergency. Charitable contributions by companies in cash which aim to support the emergency efforts are fully deductible from their corporate income tax (IRES) and regional tax (IRAP) taxable base,⁽¹⁾ under Articles 27(1) and 27(2) of Law 133/1999.

Further, contributions in cash and in kind are excluded from gift tax. For individuals and non-commercial entities, charitable contributions in cash or other properties are deductible from the income tax base up to 30% of the €30,000 charitable amount threshold.

Conversion of deferred tax assets into tax credits

The decree-law entitles all companies (not only banks and financial entities, which were already included in the scope of similar provisions) which transfer to third parties financial and commercial credits against non-complying debtors (ie, non-performing loans/unlikely-to-pays (UTPs)(2) and, in general, any commercial receivable with more than 90 days of delay in paying amounts due) by 31 December 2020 to claim a conversion into a tax credit of some deferred tax assets (DTAs), associated with:

- tax losses carried forward; and
- excess notional interest deduction carried forward (ACE surplus).

The benefit deriving from the above components cannot exceed 20% of the nominal value of €2 billion of the receivables transferred by 31 December 2020 by companies that are part of the same group.

The transformation of DTAs into tax credits is allowed if an option is exercised by the end of the tax period in which the disposal of the credits is effective and takes effect starting from the following fiscal year.

The tax credit can be used (without any limitation amount) for the payment of taxes (eg, value added tax (VAT), IRAP and withholding taxes) and social security contributions and is not included in the taxable base for both corporate income tax and regional tax.

The provision does not apply to assignments by and between parent companies and subsidiaries as well as by and between companies controlled, even if indirectly, by the same parent company.

Deferral of deadlines for approval of financial statements

By way of derogation to the Civil Code or bylaws, all companies can convene their annual shareholders' meeting to approve financial statements within 180 days after the end of the financial year.

Such an extension will apply even in the absence of specific provisions in the articles of incorporation or particular reasons justifying the extension; votes can also be cast through electronic devices or by email.

Non-listed companies may also hold their shareholders' meeting (in both ordinary and extraordinary meetings) remotely; however, they must ensure the identification of the participants, their participation and the exercise of voting rights. Further, the chair, the secretary or the notary will not need to be physically present in the same place.

In addition, limited liability companies may also be allowed to vote by written resolution or written consent, even if the relevant articles of association do not allow for such a possibility.

Listed companies may appoint a shareholder representative provided for under Article 135undecies of Legislative Decree 58 of 24 February 1998, even if their by-laws provide otherwise. Issuers may also provide in the call notice that attendance at the shareholders' meeting will take place exclusively through the designated representative. These provisions will prevail over conflicting provisions of the by-laws or in the absence of specific provisions.

As a result of the abovementioned changes to the terms of approval of annual financial statements, the timeline for the approval by the competent board of directors could be reconsidered.

Suspension of tax duties and payments, activities of tax offices and tax litigation

Decree-Law 18/2020 also provides for the temporary suspension of:

- the terms and deadlines of assessment, collection and litigation activities carried by the tax authorities from 8 March 2020 until 31 May 2020;
- the deadline for payment notification of the appeal in the first instance before the tax courts and for the completion of the complaint mediation procedures; and

- payments provided for taxpayers carrying out a business or professional activity, which achieved a turnover not exceeding €2 million in the previous fiscal year (new deadlines are different in respect to business sectors and size of taxpayers).

As a consequence, the statute of limitation for tax audits is postponed for two calendar years (ie, the fiscal year ending on 31 December 2015 can be assessed until the end of the calendar year 2022).

Suspension of tax filing and communication obligations

Decree-Law 18/2020 provides for the postponement of tax filings; the deadline can be shifted by the decree-law until 30 June 2020, without any penalty.

The measures affect enterprises with a tax domicile, registered office or operative seat in Italian territory.

Therefore, according to the present wording of the decree-law, non-resident subjects that applied for direct identification for VAT purposes in Italy or appointed a tax representative will need to file VAT filings and related communications (ie, Intrastat models relating to intra-community transactions, VAT returns for 2019, requests for reimbursement or quarterly settlement of the VAT credit for the first quarter of 2020 and communication of the periodic settlements of the first quarter of 2020) within the ordinary deadlines.

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Endnotes

(1) According to the clarification of Italian Tax Authority, 'indirect contribution' such as contributions to support the research and development of enterprises located in Italy should be deducted under Article 27 of Resolution 58/E of 25 September 2013.

(2) Non-performing loan portfolios and unlikely-to-pay exposures.

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